

**REMARKS**

The Examiner is thanked for the careful examination of the subject application. Claims 1-4, 6-10, 20-27, 38, and 42-45 are pending in the present application. Claims 5, 11-19, 28-37, and 39-41 were previously canceled. In the subject paper, amendments have been made to claims 1-4, 10, 20-22, 24-27, 38, 44, and 45 to correct informalities pointed out by the Office in the Final Office Action, correct typographical errors, better define the claimed subject matter, and present the rejected claims in better form for consideration on appeal. The amendments to the claims do not introduce new matter. Therefore, after entry of the above amendments, claims 1-4, 6-10, 20-27, 38, and 42-45 will be pending in the present application. The Applicants believe that the present application is now in condition for allowance, which prompt and favorable action is respectfully requested.

***Objection to claim 44***

The Applicants have amended claim 44 so as to correct the informality identified by the Office. Therefore, the Applicants respectfully request that objection to claim 44 be withdrawn.

***Rejection under 35 USC § 112***

The Office has rejected claims 38 and 44 under 35 USC § 112, first paragraph, for containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors, at the time the application was filed, had possession of the subject matter of the present application. The Applicants respectfully traverse the Office's rejection of claims 38 and 44 for at least two reasons.

First, the Office has interpreted that on page 14 of the Applicants' Amendment filed on April 13, 2006 (hereinafter "April 13, 2006 Amendment"), the Applicants have indicated that "the measurement of a round trip time is not within the scope" of the measurement feature of claims 38 and 44. The Applicants respectfully submit that the Office has misinterpreted the

Applicants' statement. In support of the Applicant's interpretation, the Applicants respectfully direct the Office to the first paragraph of page 14 of the April 13, 2006 Amendment, which provides:

Further, it should be noted that Tokunaga *requires the file to make a round trip transit*. As such, Tokunaga appears to be less accurate because there is no disclosure *regarding accommodating for the processing time required to buffer the incoming file or data stream and the time required to re-transmit the file/data stream from the client back to the server*. (Emphasis added.)

As evident, The Applicants' remarks were directed at distinguishing the subject application from Tokunaga. Specifically, the Applicants' remarks describe the manner Tokunaga calculates round trip transit time associated with the survey data (i.e., Tokunaga measures time associated with the server transmitting the survey data to the client as well as the time associated with the client transmitting the same survey data back to the server). Conversely, according to one aspect of the subject application, the server of the subject application receives a notification from the wireless device that the data file has been received, as provided in paragraphs 71-76 of the specification. In the reproduced excerpt, the Applicants merely point out the additional processing time involved in sending the survey data of Tokunaga instead of a notification, as defined in the subject application.

Second, the Office has alleged that the "measuring, at a server, a length of time required to receive, at a wireless device, each of the one or more data files sent from the server" feature of claims 38 and 44 is not supported by the Applicants' specification. The Office has further alleged that the descriptions in paragraphs 71-73 of the specification are not the same as the server actually measuring the time required for the server to transmit a file from the server to the client. Specifically, the Office has alleged that the server only receives a notification of the time required.

The Applicants respectfully traverse such allegations because paragraph 72 of the specification, as reproduced below, provides adequate support for the recited feature of claims 38 and 44. In pertinent parts, paragraph 72 provides:

*In this embodiment, the wireless device 222 is programmed to notify the server 204 immediately upon completion of the downloading of each of the data files 208 onto the wireless device 222. In response, the server 204 divides the size of the data file 208 by the corresponding length of time between the server 204 sending the data file 208 to the wireless device 222, and the wireless device 222 notifying the server 204 of the completed download. (Emphasis added.)*

Based on the foregoing, the wireless device notifies the server of the completed download. Thus, contrary to the Office's interpretation, the server actually measures the length of time between the server 204 sending the data file 208 to the wireless device 222, and the wireless device 222 notifying the server 204 of the completed download.

In view of the aforesaid reasons, the Applicants respectfully request that the Office withdraw the rejection of claims 38 and 44 under 35 USC § 112, first paragraph.

### ***Rejections under 35 USC § 103(a)***

Claims 1-4, 6, and 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,908,467 to Barrett et al. (Barrett) in view of U.S. Patent No. 5,968,132 to Tokunaga et al. (Tokunaga), further in view of U.S. Patent No. 6,928,468 to Leermakers. Claims 7-10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Barrett in view of Tokunaga and Leermakers, and further in view of U.S. Patent No. 6,832,239 to Kraft et al. (Kraft). Claims 20-23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Barrett in view of Tokunaga and Kraft. Claims 24-26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Barrett in view of Tokunaga. Lastly, claims 38 and 42-45 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Tokunaga in view of Kraft, Barrett, and Leermakers. The Applicants respectfully traverse the Office's rejections as each and every

combination of the cited prior art fails to raise a *prima facie* case of obviousness against the subject matter defined in independent claims 1, 20, 24, 27, 38, 44, and 45.

In the Final Office Action, the Office has specifically acknowledged that Barrett does not explicitly disclose that the server is responsible for measuring one or more data transfer rates for the exchanging operation. Nevertheless, citing to Tokunaga, the Office has interpreted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method disclosed by Barrett, using Tokunaga, such that the server measures one or more data transfer rates for the exchanging operation. In arriving at the Office's interpretation, the Office has determined that certain excerpts of Barrett would have motivated one of ordinary skill in the art to make such a modification. The Applicants respectfully disagree with the Office, as there is no disclosure or suggestion in Barrett to modify the system of Barrett in the manner proposed by the Office.

In Barrett, the local user sends a test message to the remote server where the hyperlinked information resides. Once the remote server receives the message, the remote server sends back a response to the local user. After the local user receives the response from the server, the local user evaluates the response by measuring the amount of real time between the transmission of the test message and receipt of the response. Thus, Barrett *explicitly* discloses that evaluations are done by the local user. As such, one of ordinary skill in the art reading Barrett would not have been motivated to go against the explicit disclosure of Barrett and use a server to measure a round trip transit time, as taught in Tokunaga. In fact, the excerpts of Barrett cited by the Office as evidence of the alleged motivation in Barrett (if any exists) have nothing to do with using another component, much less the server, to measure the round trip transit time. Essentially, the Applicants' assertion is supported by the Office's own interpretation of the cited excerpts:

One would be motivated to have this as there is need for determining download times based on the influence of the amount of traffic between a user and remote server and for giving users an indication of the download times.

Additionally, there is no teaching or suggestion in Barrett that the server can be used to measure the transit time. Nor does Barrett disclose or suggest that the remote server has such capabilities.

Furthermore, even if one of ordinary skill in the art were to modify Barrett using the teachings of Tokunaga, as suggested by the Office, or Tokunaga using the teachings of Barrett, the resulting combination would still not have disclosed a server measuring one or more data transfer rates for receiving one or more data files from a server, as defined in the subject application. Rather, the time measured would have been either the time associated with a local user's transmission of the arbitrary message to the server and the server's transmission of an arbitrary response to the local user's message disclosed in Barrett, or the time associated with a round trip transit of the survey data disclosed in Tokunaga.

It is respectfully submitted that calculating the data transfer rate based on time associated with a round trip transit of the same data involves extra processing stages, and as such, is not an accurate calculation of data transfer rate for receiving one or more data files. In fact, Tokunaga explicitly discloses such additional processing steps. For instance, as provided in column 14, lines 66-67 through column 15, lines 1-9 of Tokunaga, the data receiving side computer has to identify the type of data received. To identify the type of data, the receiving side has to examine the first octet region of the received data. Once it has been determined that survey data has been received (as opposed to image data), the data receiving side computer has to send back the survey data to the server. Thus, Tokunaga discloses that the calculated time also includes time spent on examining the data. Accordingly, the data transfer rate calculated in Tokunaga cannot be an accurate data transfer rate associated with sending the survey data file from the server to the client.

Still further, independent claims 1, 20, 24, and 27 have been amended to recite that each of the data files contains information representing the size of the data file. Independent claims 38, 44, and 45 recite that each data file contains an associated size field that indicates the size of its associated data file. Contrary to these claims, neither the message or response of Barrett nor the survey data of Tokunaga (components interpreted by the Office to be the data file of the subject application) contain information representing their sizes. Rather, the message and response of Barrett as well as the survey data of Tokunaga are generated randomly and are not disclosed, taught, or suggested to include any information representing their sizes.

Additionally, independent claims 1, 20, 24, 27, 38, 44, and 45 have been amended to recite that the data files include information about the one or more application programs available for downloading onto the wireless device. In contrast to these claims, there is no prior art disclosure, teaching, or suggestion that the message and response of Barrett or survey data of Tokunaga include any information about the page to be downloaded. Rather, the message and response used in Barrett and the survey data used in Tokunaga are arbitrary data and do not have any relation with the page to be downloaded. Furthermore, it is respectfully submitted that one of ordinary skill in the art reading the disclosures of Barrett and Tokunaga would not have been motivated to go against specific disclosure of Barrett and Tokunaga and include such information in the message, response, or the survey data. In fact, Barrett explicitly discloses that the test message need not be in any particular format and that the test message and the response are preferred to be short. Moreover, nothing in Leermakers can cure such deficiencies pointed out in Barrett and Tokunaga.

In the same manner, nothing in Kraft can cure any of the above-referenced deficiencies in Barrett, Tokunaga, and Leermakers. In fact, the Applicants respectfully traverse the Office's interpretation of Kraft, and thus, the Office's taking of official notice based on such an

interpretation. *See* MPEP 2144.03. Specifically, the Applicants disagree with the Office's allegation that Kraft teaches dividing the size of requested data by a data transfer rate in order to estimate a down load time. It is respectfully submitted that the cited excerpts of Kraft or the entire disclosure of Kraft does not stand for the Office's interpretation.

Kraft is directed at a system for managing a high volume of requests reaching an overloaded file server. In the cited paragraphs, Kraft delays the processing of a client's new request to download a large file when the server load exceeds a certain threshold. Rather, the client is informed of the estimated time until a user's download request can be started or completed. To calculate the estimated start time for a new request, Kraft uses the information associated with previous downloads (if such information is stored to the database) as well as the information associated with the current downloads such as the size of the downloads, their start time, and their estimated start and completion time. Kraft divides *the sum of the outstanding bytes to be downloaded* by an estimate of the total bandwidth available to the file server so as to calculate the estimated time to download. That is, in Kraft, calculations are performed based on all the outstanding bytes to be downloaded associated with *all* of the current downloads, and not a single download.

Based on the forgoing, it is respectfully submitted that contrary to the Office's interpretation, these paragraphs do not support the Office's interpretation that "Kraft teaches dividing the size of requested data by a data transfer rate in order to estimate a download time." Accordingly, the Applicants respectfully traverse the Office's taking of official notice based on such an interpretation.

Additionally, the Applicants traverse the Office's taking of official notice in the Final Office Action without citing to any prior art in support of the Office's assertions. It is respectfully submitted that it is not appropriate for the Office to take official notice of facts

without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. *See* MPEP 2144.03. For instance, the Office has not cited to any prior art reference in support of the Office's taking of official notice that "calculating the average of a data set is a well known mathematical analysis technique." *See* Final Office Action, page 22.

Yet further, the Applicants submit that none of the combinations of the cited prior art disclose, teach, or suggest all the features of independent claims 1, 20, 24, 27, 38, 44, and 45. As described in more details above, *inter alia*, the combination of the cited prior art fails to disclose, teach, or suggest one or more data files containing information representing the size of the data file or having an associated size field, or one or more data files including information about the download file and the size of the download file. As described in more detail earlier, the message and response of Barrett as well as the survey data of Tokunaga are generated at random and have no relation with the page to be downloaded.

Based on the forgoing, independent claim 1, 20, 24, 27, 38, 44, and 45 are believed to be allowable over the prior art of record. Dependent claims 2-4, 6-10, 21-23, 25-26, 42, and 43 are also believed to be allowable for at least the same reasons as the respective independent claim. The Applicants hereby submit that the subject Amendment complies with 37 C.F.R. section 1.116(b) and should be entered.



## CONCLUSION

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated September 18, 2006  
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